

**REMARKS/ARGUMENTS**

Favorable reconsideration of this application is respectfully requested.

Claims 7-22 are pending in this application. Claims 1-6 have been canceled without prejudice or disclaimer. Claims 7-16 have been amended and new Claims 17-22 have been added to better define the present invention without the introduction of any new matter.

The outstanding Office Action includes a draftspersons objection to FIGS. 3 and 4 of the drawings, a rejection of Claims 1, 13 and 15 under the second paragraph of 35 U.S.C. §112, a rejection of Claims 1-6, 13, and 15 under §103(a) as unpatentable over Hsiao et al. (U.S. Patent No. 6,266,784, Hsiao) in view of Kazu (JP 06153140A), a rejection of Claims 7-11 under §103(a) as unpatentable over Hsiao in view of Kazu in further view of Curtis (U.S. Patent No. 6,278,992), and a rejection of Claims 12, 14, and 16 as unpatentable over Hsiao in view of Kazu in further view of Tarabella (U.S. Patent No. 5,796,945).

It is believed that the objection to the drawings should be withdrawn in view of the presentation of the new drawing sheet without the objected to copying mark.

It is further believed that the cancellation of Claim 1 renders the rejection thereof under the second paragraph of 35 U.S.C. §112 as being moot. With further regard to the rejection of Claims 13 and 15 under the second paragraph of 35 U.S.C. §112, it is believed that the replacement of the objected to word "the" with -- a -- should be sufficient to overcome this rejection.

If the Examiner believes that further formal changes are required, he is invited to contact Applicants' representative at the below-indicated telephone number so that mutually agreeable formal changes can be agreed upon.

With regard to the rejection of Claims 1-6, 13, and 15 under §103(a) as unpatentable over Hsiao in view of Kazu, it is first noted that the cancellation of Claims 1-6 renders their rejection on this grounds to be moot.

With further regard to the rejection of Claims 13 and 15 as unpatentable over Hsiao in view of Kazu, the rejection of Claims 7-11 as unpatentable over Hsiao in view of Kazu in further view of Curtis, and the rejection of Claims 12, 14, and 16 as unpatentable over Hsiao in view of Kazu in further view of Tarabella, it is noted that each of these rejections is founded on an improper interpretation of the reasonable teachings and fair suggestions of Hsiao to those of ordinary skill in the art.

Turning to the teachings of col. 4, lines 7-21 of Hsiao that are relied upon to teach that data stored in an open area is replaced with update data at a specified time, it is clear that col. 4, lines 7-21 actually teaches backing up client files created and stored internally by system 15 in a primary storage pool 40 in server 19. While the primary copy of the client file is stored in the primary storage pool 40, there is no teaching or suggestion that the client file being stored replaces any other data, much less up dates it. It is taught here that a storage manager 30 also maintains a catalog within the server database 60 that simply lists data in the storage pools 40 and 50. Again, there is no teaching or suggestion that the catalog listing files stored within the server database 60 replaces any other data, much less up dates it. In this regard, the actual teaching of Hsiao is that once the client file is stored in the primary storage pool 40 in server 19, the database 60 catalog listing of files stored is updated by adding a listing not by replacing anything. Even if this mere listing actually replaced a previous listing, there is no updating of that replaced listing, just an updating of the catalog in terms of

adding a new listing. Moreover, as a client file can be created at any random time, there is no hint in Hsiao of specifying any particular time for this adding of a new listing to the catalog. Accordingly, and contrary to the assertion in the outstanding Action, there is no reasonable teaching or fair suggestion here of data stored in an open area that is replaced with update data at a specified time, as all the claims require.

The rationale for the rejection adds reliance on col. 4, lines 22-36 of Hsiao to the reliance on col. 4, lines 7-21 of Hsiao as to suggesting that backup data produced from replacement update data is stored in a retrieval area. However, nothing at col. 4, lines 22-36 of Hsiao cures the above noted deficiency of Hsiao as to lacking any teaching or suggestion of replacing any data with update data, much less replacing that data with update data at any specified time.

In this last regard, col. 4, lines 22-36 of Hsiao simply disclose that an additional backup copy of the client file, not a backup copy of any listing in the catalog that was “updated,” is provided in the storage pool 50 by the manager 30 of server 19. It then adds a listing of this additional backup copy to the catalog list to “update” it by addition, not by replacement of existing data therein. While a cross reference is also added and a further backup to a storage volume is taught, there is still no reasonable teaching or fair suggestion here of data stored in an open area that is replaced with update data at a specified time, as noted above, much less a reasonable teaching or fair suggestion of that backup data produced from replacement update data is stored in a retrieval area.

In addition, the further reference in the outstanding Action to col. 6, line 34-col. 7, line 7, as to recovery plan storage and recovery by target server 90 is not seen to be

Appln. No. 09/537,074  
Reply to Office Action of 04/18/03

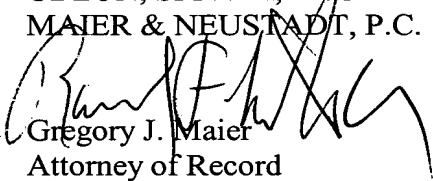
reasonably read as a client request for data from the claimed retrieval area as to backup retrieval files having the claimed retrieval names that must include replacement of data times.

Accordingly as none of Kazu, Curtis, or Tarabella, considered alone or in any proper combination, cure the deficiencies in Hsiao discussed above, the rejection of Claims 13 and 15 as unpatentable over Hsiao in view of Kazu, the rejection of Claims 7-11 as unpatentable over Hsiao in view of Kazu in further view of Curtis, and the rejection of Claims 12, 14, and 16 as unpatentable over Hsiao in view of Kazu in further view of Tarabella are respectfully traversed.

As no other issues are believed to remain outstanding relative to this application, it is believed to be clear that this application is in condition for formal allowance and an early and favorable action to this effect is, therefore, respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

  
Gregory J. Maier  
Attorney of Record  
Registration No. 25,599  
Raymond F. Cardillo, Jr.  
Registration No. 40,440



**22850**

(703) 413-3000  
(703) 413-2220 (fax)  
GJM:RFC/jmp

I:\atty\rfc\203709-am.wpd